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Attorney Docket RSW9-2000-0054-US1

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re application of Donald J. Boulia

November 4, 2005

Serial Nbr: 09/619,178

Filed: July 19, 2000

For: Technique for Sending TCP Messages through HTTP Systems

Art Unit: 2155

Examiner: Oanh L. Duong

APPELLANTS' REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted in furtherance of the Appeal Brief that was filed in this case on July 19, 2005. The following remarks are respectfully submitted.

DISCUSSION

1. Appellants respectfully submit the following comments, responsive to the Examiner's Answer dated September 23, 2005 (hereinafter, "the Examiner's Answer").
2. Page 17, paragraph (A) of the Examiner's Answer discusses Appellants' claim language "wherein the receive channel is distinct from the send channel", which appears in the second limitation of Appellants' independent Claims 1, 10, 19, 28, and 31. In this paragraph of the Examiner's Answer, it is stated that Appellants cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In their Appeal Brief dated July 19, 2005 (hereinafter, "the Appeal Brief"), Appellants relied not only on the absence of this feature (i.e., the absence of distinct channels for sending and receiving) in Erickson's teachings (see paragraphs 15 - 21 of the Appeal Brief), but also on (i) the fact that Erickson teaches away from using more than one channel (see paragraph 22 of the Appeal Brief, as well as further discussion in paragraphs 24 - 26 thereof) and (ii) the fact that, given Erickson's statements describing advantages of using a single connection, one of skill in the art would not be motivated to attempt changing what Erickson has defined by trying to introduce additional channels therein (see paragraph 29 of the Appeal Brief).
3. Page 17, paragraph (B) of the Examiner's Answer discusses the fifth and sixth limitations of Appellants' independent Claims 1, 10, 19, 28, and 31. The Examiner states that he has given the "broadest reasonable interpretation" of "send channel" and "receive channel". Appellants respectfully submit that an impermissibly broad interpretation has been used, which ignores

explicit limitations of Appellants' claim language. In particular, the fifth limitation refers to transmissions "on the send channel" (or "using the send channel") and the sixth limitation refers to transmission "on the receive channel" (or "using the receive channel"). Given that the second limitation of Appellants' independent claims explicitly states that the send and receive channels are distinct, it is improper for the Examiner to use Erickson's teachings of a single connection/channel as a reference for both Appellants' fifth and sixth claim limitations.

4. Page 18, paragraph (C) of the Examiner's Answer discusses Appellants' argument that the motivation for combining Erickson and Inala is flawed. Appellants note that a new statement of motivation has been substituted as the final sentence of this paragraph, as contrasted to the motivation that was previously provided in the Office Action dated March 25, 2005 (hereinafter, "the Office Action"). On page 4, lines 7 - 9 of the Office Action, the motivation to combine was stated as "improv[ing] the efficiency of transmission in term[s] of cost and simplicity ...". Appellants discussed flaws in this motivation in paragraph 34 of the Appeal Brief. In paragraph (C) on page 18 of the Examiner's Answer, the newly-provided motivation states that combining Erickson and Inala would "provide the server the capability to determine at any point in time exactly which clients may be viewing any one web document and provide such information to member clients", citing col. 8, lines 54 - 56 of Inala. Appellants fail to see any relevancy of this statement to their claimed invention. While the newly-provided motivation may be relevant for Inala's web chat-based environment, where it enables site-specific chat sessions to be dynamically established (Inala, col. 5, lines 13 - 15 and col. 6, lines 60 - 61) in view of which web site a group of users is currently visiting (Inala, col. 7, lines 31 - 34 and col. 8, lines 52 - 53),

Appellants have described no scenarios whereby their target server 381 or their Web server 350 would need to determine "exactly which clients may be viewing" a web document (or anything else for that matter) and then "provide such information to [other] clients". Appellants therefore respectfully submit that the newly-provided motivation for combining Erickson with Inala is improper. As noted in paragraph 13 of the Appeal Brief, a proper motivation for combining the references is a required element for establishing a *prima facie* case of obviousness in a §103 rejection.

5. Accordingly, Appellants maintain their position that Erickson and Inala do not teach all elements of their claimed invention, and that a *prima facie* case of obviousness under 35 U. S. C. §103 has not been made out.

CONCLUSION

In view of the above, Appellants respectfully submit that the rejection of appealed Claims 1 - 31 is overcome. Accordingly, it is respectfully urged that the rejection of appealed Claims 1 - 31 not be sustained.

Respectfully submitted,



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I hereby certify that the following enclosed or attached papers and fee

- (1) Patent Reply Brief (4 pages)
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Marcia L. Doubet
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